Community Treatment Orders in Ontario: Agreed Areas for Improvement

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Background

Procedural fairness in mental health review tribunals: the views of patient advocates

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Mental health review tribunals face the difficult task of balancing an obligation to be efficient and accessible against the obligation to provide procedural fairness. We conducted focus groups with lawyers and advocates who support people with matters before the Queensland Mental Health Review Tribunal to ascertain their views on issues relating to procedural fairness in this particular forum. Consistent with similar studies in other jurisdictions, our participants expressed concerns about how well informed their clients were about the proceedings, the probative value of the evidence relied upon and the extent to which medical evidence is effectively challenged. We analyse the concerns raised by our participants in light of the limited Australian case law on procedural fairness in mental health review tribunals.

Keywords: mental health; mental health review tribunal; procedural fairness; tribunal.

Professional Values and Mental Health Tribunals: How Healthcare Professionals' and Lawyers' Views Are Shaped by Values, and How This Might Impede Reform

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ABSTRACT

Most countries that provide for compulsory treatment for mental illness have a system by which this treatment is subject to independent legal oversight. Many countries use a special type of legal body for this purpose, called a mental health tribunal. Mental health tribunals have been subject to criticism from the points of view of both legal professionals and mental healthcare practitioners. Similar themes have manifested in these criticisms and have been consistent across several decades; legal professionals tend to focus on the tribunals being biased toward the medical opinion, and acting as a 'rubber stamp', whereas healthcare practitioners tend to focus on the adversarial nature of the trial, and the adverse effect that this can have on clients. However, empirical studies of the tribunals have not separated and directly compared these perspectives. This study aimed to explore this dynamic between lawyers' views and healthcare practitioners' views of mental health tribunals. We used thematic analysis to re-analyse data from two previous research studies, one which looked at lawyers' views of the tribunals, and one which looked at healthcare practitioners' views. Our results are divided into three themes: views of the problems with tribunals, professional roles in relationship to the tribunals and professional values demonstrated through these views and roles. We then consider if the 'clash of values' represented by these findings, and found in the literature, may pose an impediment to tribunal reform. Identifying and exploring this barrier is an important step to moving beyond critique to reform.

- We found:
  - widespread dissatisfaction with the legal regime of compulsory mental health treatment
  - strikingly different views of what the specific problems were associated with differing professional values; however
  - there are many shared values between the groups:
    - social responsibility
    - fairness
    - wellbeing
    - autonomy

Study: Ontario, Canada, 2024

Study questions:

- What do the people in involved in compulsory treatment for mental illness believe are areas for improvement?
- What improvements would have broad support from different groups?

Study Aims:

- To make realistic, broadly acceptable recommendations for change that would benefit clients

Participant details

Sample

- 6 clients
- 16 lawyers
- 13 psychiatrists
- 14 other healthcare professionals
  - CTO coordinators
  - Nurses
  - Social workers
  - Other allied health professionals
- 13 mental health tribunal members
- 6 family members
- 4 advocates

Data collection

- Stage 1: Stakeholder interviews (64 interviews)
- Stage 2: Tribunal observations (8 observations)
- Stage 3: Mixed focus groups (4 focus groups with a total of 25 participants)

Compulsory mental health treatment: Ontario vs Australia

Differences:

- Community Treatment Orders (CTOs) a distinct legal mechanism from compulsory inpatient treatment.
- CTOs can only be made if person was previously admitted as involuntary inpatient (either twice or for 30 days in last 3 years)
- Orders must be ‘consented’ to by either the client themselves or a substitute decision-maker

Compulsory mental health treatment: Ontario vs Australia

Similarities

- Eligibility criteria: a) existence of mental disorder and b) as a result danger themselves or others
- Psychiatrist makes treatment order
- Orders usually last 6 months
- Orders reviewed by a tribunal

Study findings: Areas of disagreement
Eligibility criteria

Doctors thought eligibility criteria should be **expanded**

Lawyers thought the eligibility criteria should be **contracted**

Study findings: Areas of agreement
1. Better data

Lawyer:

- *the fact that we don't publish these statistics, the fact that people aren't aware of the CTO system, and the fact that there's no … accountability for getting people off the CTOs*

Advocate:

- *some of the transparency and accountability that used to be visible through accountability agencies …. I cannot access that information readily anymore.*

Study findings: Areas of agreement
1. Better data

Lawyer:

- *I … as an African Canadian think that we need … racial data on people that are being subjected to CTOs. Because from just the matters I do, and a lot of my experiences, a lot of people of colour, not just people of colour, indigenous individuals are very predominant… I just think that that data is critical for us to really understand who are subjected to CTOs, and when.*

CTO coordinator:

- *I'm wondering if people more racialized, more disadvantaged, are put on CTOs, or maybe they're not. Maybe it's the more favored population that are placed on CTOs because the system is more willing to provide them services. I don't know.*

Study findings: Areas of agreement
1. Better data

Psychiatrists:

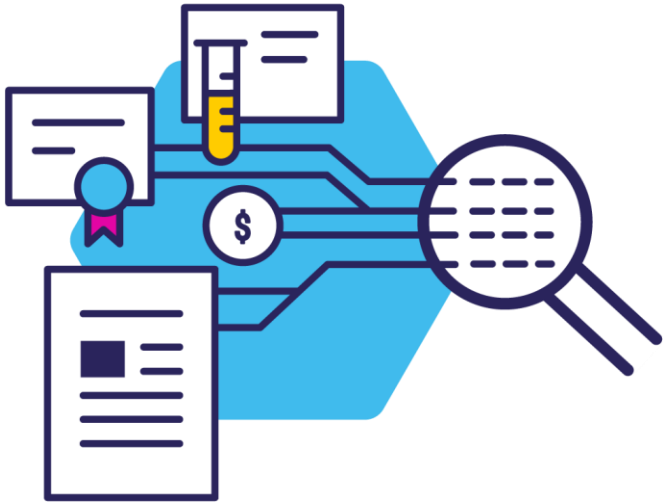
- *[We need to] look at pre and post CTO for a given patient … how much time in hospital before the CTO, how many hospitalizations before, after, that kind of thing.*

- *[It would be beneficial to] evaluate CTOs a little bit better […] looking at the CTOs, where they're employed, where they're used; if you're expanding services for patients with schizophrenia, how many are using CTOs? What are the outcomes? And actually do a good review.*

Study findings: Areas of agreement
1. Better data

Recommendation 1:

Expand collection of epidemiological and demographic data.



Study findings: Areas of agreement
2. Improved police involvement

Client:

- *They're very unfriendly when they get called to pick me up, to take me to the hospital… they bang really hard on the door, really, until they terrify me… They trigger insomnia in me. They trigger all kinds of terror in me.*

Social worker:

- *[T]he police vary. Their approach varies wildly depending on the person enforcing them. Some police are good with their approach. Some are not.*

Study findings: Areas of agreement
2. Improved police involvement

Lawyer:

- *if you think of the history in Canada, the history, I imagine, worldwide, between police and those living with mental health issues, the interactions often don't go well, right?*

CTO coordinator:

- *It would be really nice to have a mental health police, honestly, if there was a way that in a dream scenario I would be a part of a team as the CTO Coordinator slash nurse and I'd have two officers and we would go give injections to people.*

Study findings: Areas of agreement
2. Improved police involvement

Recommendation 2:

Expand mental health training for all police officers and expand the number of dedicated mental health police officers with expertise in trauma informed practice

Study findings: Areas of agreement
3. Community Treatment

Client:

- *The cooking class and healthy lifestyle classes. They help a little bit. And they are helpful, if I run low on groceries, and it's a bad day like it's a snowstorm or something [they] might come the next week and help me, drive me to the grocery store and help me pack up my bag up on groceries.*

Lawyer:

- *[The] involvement of social work, the involvement of physicians, everything around the medication is a positive.*

CTO coordinator:

- *[W]hen CTOs were initially developed in like 2000, I remember at that time, you could not have a CTO without a case manager. And that sort of fell by the sideline. And now most of my CTOs don't have case managers.*

Study findings: Areas of agreement
3. Community Treatment

Recommendation 3:

Expand funding and provision of comprehensive community treatment teams so that all people subject to CTOs have access to supports.

Study findings: Areas of agreement
4. Mental health tribunal hearings

Client

- *You're asking me what it's like to be abused. That's essentially what you're asking, honestly. I mean, you could Google what it's like, what happens to a person when you abuse them. But you know, you feel deadening, a deadening of emotions, it makes you dead inside.*

Lawyer:

- *It's discussing intimate details of their life and their health in a public context. So that, in itself, can be traumatizing.*

Psychiatrist:

- *When I issue CTO, it's a lose lose battle, if I go to a hearing. Even if I win, it is a lose lose. Because I think it's just destroyed the relationship.*

Study findings: Areas of agreement
4. Mental health tribunal hearings

Recommendation 4

Develop strategies to lessen the traumatic nature of the hearings

For more details see: Boyle, S., Jager, F., Domingue, J. L., & Perron, A. (2026). Lack of challenge to substantive criteria at mental health tribunals: Amplifying the medical perspective?. *International Journal of Law and Psychiatry*, *105*, 102166.

Study findings: Areas of agreement
5. More client involvement in decision-making

Client:

- *And then you see the doctor when it's up for renewal. He speaks to you for like five minutes. He comes up with his impression of you during that brief stint.*

Psychiatrist:

- *if a CTO is going to be instituted with somebody who is capable of becoming …capable down the road, I think supported decision making would be a better way to approach it, because then you get greater buy in.*

Study findings: Areas of agreement
5. More client involvement in decision-making

Lawyer:

- *[S]ometimes I've managed to get meetings [between the client and the doctor]. The client is satisfied. After we sit down and talk with the doctor, they're satisfied. They've been heard. They no longer want the hearing. The doctor's relieved too, because it's less paperwork for them.*

Psychiatrist:

- *Are there times where we don't listen enough to patients? Well, I think there are.*

Study findings: Areas of agreement
5. More client involvement in decision-making

Psychiatrist

- *To me, [patient involvement in treatment] is a clinical question… what you're discussing is just clinical finesse. I don't think that can be written in legislation.*

Study findings: Areas of agreement
5. More client involvement in decision-making

Recommendation 5:

a. Further research into formalised processes for including client in treatment as much as possible, including piloting a process, such as a mediated meetings.
b. Development of best practice guidelines for communication with clients on CTOs.

Study findings: Further areas of agreement

- Develop better resources for family members to explain their role and assist them in performing it.
- Review CTO forms to improve their clarity, without reducing the rights protection they currently provide.
- Require second medical opinion to be provided for CTOs, covering diagnosis, treatment plans, and CTO eligibility criteria. Create an independent, separately funded organisation to provide these second opinions.**
- Expand provision of social housing and addiction services.

Study outcomes

- Report has been created:
- Report submitted to Ontario Ministry of Heath
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